



SAIIA REPORTS

Report number 41

Reviewing Good Governance Towards a Methodology for the African Peer Review Mechanism

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Eskom Barratt Rotary Fellow 2003

Reports

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African Peer Review Mechanism**

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THE SOUTH AFRICAN INSTITUTE OF INTERNATIONAL AFFAIRS

ISBN: 1-919969-19-5

SAIIA Report No. 41

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Reviewing Good Governance Towards a Methodology for the African Peer Review Mechanism

Rawia Tawfic¹

Introduction

Since the late 1980s the concept of good governance has become widespread in donor discourse, as well as the discourse of development and public policy studies. After it first appeared in a World Bank report in 1989,² it has become central to many related studies. Although more than a decade has passed since its introduction, the precise meaning of the concept has yet to be agreed on. Analysts have asked questions like: What exactly does the term mean? Is it a universal concept or does its meaning vary from one cultural and social context to another? What was the intention of the World Bank when coining the term? What critique does it invite? To what extent is it acceptable to make aid conditional on good governance, and accordingly how effective will the externally determined changes in policies and structures aimed at meeting the standards of good governance be?³ As yet, no generally accepted answers have been found to these and related questions.

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² World Bank, *Sub-Saharan Africa: From Crisis to Sustainable Growth*. Washington, DC: World Bank, 1989.

³ See, for example, Doornbos M, 'Good governance: The rise and decline of a policy metaphor', *Journal of Development Studies*, 37, August 2001, pp.95–6; Weiss T,

The debate around these questions has been significant in the African intellectual arena, since the absence of good governance in Africa was argued by the World Bank in the 1989 report to be one of the main reasons for the African development predicament. Some African analysts have criticised the concept and its indicators using the 'cultural particularity' argument,⁴ while others have searched for good governance practices in African traditional systems to prove that Africa already has deeply rooted traditions of good governance and, therefore, does not need to have Western patterns and indicators of good governance prescribed to it.⁵

This debate gained greater momentum after the inception of the New Partnership for Africa's Development (Nepad), which adopted the principle of good governance as one of its main pillars. It considers the principle to be a major condition for African development, with an African Peer Review Mechanism (APRM) to review good political as well as economic and corporate governance,⁶ a step that differentiates Nepad from development plans that preceded it.

'Governance, good governance and global governance: Conceptual and actual challenges', *Third World Quarterly*, 21, 5, 2000, p.797; Elsenhans H, 'The political economy of good governance', *Journal of Developing Societies*, 17, 2, November 2001; and Austin D, 'Good governance?', *The Round Table*, 361, 2001.

⁴ See, for example, Mafeje A, 'Democratic governance and new democracy in Africa: Agenda for the future'. Paper presented at the African Forum for Envisioning Africa, Nairobi, April 2002; Tandon Y, 'Reclaiming Africa's agenda: Good governance and the role of NGOs in the African context'. Paper presented at the conference 'Good Governance for Africa: Whose Governance?', University of Limburg and the European Centre for Development Policy Management (ECDPM), Maastricht, November 1995; and Mulinge M & G Lesetedi, 'Corruption in sub-Saharan Africa: Towards a more holistic approach', *African Journal of Political Science*, 7, 1, June 2002, pp.51-77.

⁵ See Ki-Zerbo J, 'The historic framework of governance in Africa: Good governing in Africa, Good governing for whom?', *African Association of Political Science Newsletter*, January-April 2000.

⁶ See the *Nepad Framework Document*, Abuja, October 2001 (available at www.nepad.org/en.html). However, it should be mentioned that at the fifth Nepad Heads of States Implementation Committee meeting in Abuja (November 2002),

The African commitment to good governance and the establishment of the APRM under Nepad was crucial in persuading the West (especially the G8 countries) to support the new initiative, and, more importantly, there is also a real need for such a reforming tool in many African countries. It is thus important to ascertain whether there are any factors that can increase the possibility of an effective peer review mechanism being established, a concept that some analysts still view as practically unrealistic and politically impossible. For instance, Steven Friedman believes that 'we cannot have an African peer review mechanism that really works.' For him, 'it is really a bizarre idea to have those heads of states and their nominated persons to sit around a table to say who is behaving himself and who is not. This provides no role for the agency of citizens.'⁷ However, even those who are sceptical about the APRM process do not deny that the mechanism is a potential leverage that can be used to make it strategically easier to democratise the African continent.

The first key issue that will determine the effectiveness of this mechanism is the question of who will conduct the governance reviews. At the moment, peer review under Nepad is to be carried out by a committee of participating heads of state and governments, a panel of eminent persons and the APRM secretariat. However, questions are still raised about the selection mechanisms for members of these organs, their relationship with other APRM-related institutions within the African Union (AU) and, more importantly, the role of African heads of state who, as some analysts point out, are going to be both players and referees at the same time.

The second key question in the review process concerns the principles upon which the peer review mechanism will be based.

South African Deputy Foreign Minister Aziz Pahad declared that the Nepad peer review mechanism would be limited to economic and corporate governance issues only. However, this was rejected by the Western partners, leading to the reinclusion of the political governance review in the APRM.

⁷ Interview with Steven Friedman, Senior Researcher, Centre for Policy Studies, (Johannesburg, 30 May 2003).

Although some standards and indicators have been set in the 'Objectives, standards, criteria and indicators for the APRM' (OSCI) document⁸ issued in March 2003, this has not put an end to the debate around measuring good governance, as analysts see these criteria, especially those regarding political governance, as being too broad to reflect a country's real political governance performance. Another observation was that objectives and standards that relate to democracy and political governance all refer to existing undertakings by African governments through the AU and to key international commitments. There is therefore no real difference between Nepad and non-Nepad countries, as both are supposed to be committed to the implementation of the stated principles of good governance. This may reopen the question of the extent to which the APRM includes substantive good political governance review.⁹

The third key issue in this context is what the consequences of the peer review process will be. Although peer review mechanisms in general do not imply punitive actions or sanctions, some African commentators, affected by the stance of African governments towards the Zimbabwean crisis, call for real punitive action, as they feel that African misgovernance cannot be remedied through the 'naming and shaming' of offenders by independent panels.¹⁰ Others believe that peers have no power of enforcement beyond persuasion.¹¹

The present paper will discuss these three key questions, with the aim of developing a methodology for how the APRM should work.

⁸ 'Objectives, standards, criteria and indicators for the APRM' (OSCI) document, Nepad Secretariat, March 2003, www.nepad.org/en.htm

⁹ See Cilliers J, 'Peace and security through good governance: A guide to the Nepad African Peer Review Mechanism.' ISS Paper No. 70. Pretoria: Institute for Security Studies, April 2003, p.7.

¹⁰ See Kagora B, 'Can apples be reaped from a thorn tree? A case analysis of the Zimbabwean crisis and Nepad's peer review mechanism.' Paper presented to the Southern African Regional Poverty Network Workshop on 'Engaging Nepad: Government and Civil Society Speak to One Another', Durban, July 2002.

¹¹ Stremiau J, 'Nepad's peer review still work in progress', *Business Day*, 4 November 2002.

The elaboration of such a methodology is based on a series of interviews with those involved in analysing and developing Nepad and/or peer review mechanism processes, including practitioners, civil society activists (academics and researchers) and members of the business community. Since defining such a methodology requires a review of existing examples and experiences of other peer review mechanisms, the paper begins by drawing observations and lessons from similar experiences. It will then move on to explore different aspects and stages of the review process, including the conceptual basis of the review, its indicators and criteria, its structure and organisation, and finally its results and repercussions.

Peer Review Mechanisms: Lessons from Related Experiences

Although there is no rigorous definition of peer review, a specific meaning for the expression has evolved over the years through the practices of international organisations. According to this, peer review can be described as the systematic examination and assessment of the performance of a state by other states in certain fields, with the ultimate goal of helping the reviewed state improve its policy-making, adopt best practices and comply with established standards and principles.¹²

While peer review as a working method is most closely associated with the Organisation for Economic Co-operation and Development (OECD), several other intergovernmental organisations and international programmes make use of this process. Examples of these include the peer review of individual action plans in the Asia-Pacific Economic Co-operation (APEC) system, the World Trade Organisation (WTO) trade policy review mechanism (TPRM), the

¹² Pagani F, 'Peer review: A tool for co-operation and change — An analysis of an OECD working method', Organisation for Economic Co-operation and Development (OECD), September 2002, p.9.

International Monetary Fund (IMF) surveillance mechanism, and the peer review processes in several activities of the European Union (EU).¹³

Although these mechanisms concentrate mainly on economic, financial and trade aspects, a general review of their structure and operational dynamics can help in identifying some universal characteristics of the peer review process. It also provides some lessons that could be beneficial to the APRM, while taking into account the difference between the African context and the contexts in which these other reviews were carried out.

In terms of the operational dynamics of these peer review programmes, they differ according to areas of review, review frequency, cost and comprehensiveness, levels of economic development in reviewed countries, and the peer selection process. However, Andrew Mitchell points out that all such reviews share three characteristics. First, they involve a committee of experts examining and assessing proposals, projects, regulatory regimes or other endeavours. Second, they represent a collegial form of monitoring compliance and progress, involving peer pressure that may come through formal recommendations or informal dialogue by the peer countries and group scrutiny rather than legal sanctions. Third, they involve dialogue and interactive investigation.¹⁴

The objectives of peer review vary among schemes, but can include offering advice and proposals on the relevant policy dilemmas of the country under review, improving policy-making through sharing of information and experience, gathering information about policy and publicising it, and supplying expertise in policy-making, which is scarce in certain countries.¹⁵

Therefore, the peer review mechanism, as implemented in these experiences, is one of exposing the reviewed country's shortcomings

¹³ *Ibid.*, p.11.

¹⁴ Mitchell AD, 'Practical modalities of peer review in a multilateral framework on competition', OECD Joint Group on Trade and Competition, March 2003, pp.6-7.

¹⁵ *Ibid.*

and advising it on how to remedy these by making use of other countries' experiences. Although one should acknowledge that different elements might be needed in the African context, one should also keep in mind this framework set by previous mechanisms while discussing the APRM.

At their meeting in Copenhagen in 1993, the EU member states set up criteria for the political review of other European countries seeking to join the union, creating a kind of pre-peer-review process for candidate states. Primary amongst these criteria is the requirement for 'stability of institutions guaranteeing democracy, the rule of law and respect for and protection of minorities.'¹⁶

In order to evaluate the extent to which candidates meet these political criteria, the European Commission (EC) not only provides a description of their various institutions, but also examines how any rights and freedoms are exercised in practice in applicant countries. Progress towards meeting each criterion is assessed against a detailed checklist. The reports draw on and are cross-checked against numerous resources, starting with information provided by the candidate country and including reports from the European Parliament, evaluations from member states, or material supplied by international organisations and non-governmental organisations (NGOs).¹⁷

This European experience holds a special significance, as some African analysts have supported the idea of having these kinds of pre-conditions set for any country wishing to join Nepad or even the AU process. For Steven Friedman, for instance, 'the members of the AU and Nepad represent a community with values that must be respected by any country that wants to be a part of this community. This is a way to create pressure for respecting these values.'¹⁸ Although it is too late to apply these pre-conditions in the African

¹⁶ Presidency Conclusions, Copenhagen European Council, 21–22 June 1993.

¹⁷ For more information about the European experience, see Kok W, 'Enlarging the EU: Achievements and challenges', Report of Wim Kok to the European University Institute, Robert Schuman Centre for Advanced Studies, March 2003.

¹⁸ Interview with Steven Friedman.

context, many other lessons can be learned from the European experience, not least of which is the gradualist approach to integration and change.

An analysis of the various peer review experiences shows some general principles that should be considered in the case of the APRM. The first of these is that for a peer review to be effective, some prerequisites are necessary, the most important of which is mutual trust among states involved in the review (because it is mainly a process conducted on a non-adversarial basis and is supposed to be a reciprocal evaluation process and a system of mutual accountability). Other prerequisites are confidence in the mechanism itself and the existence of a degree of convergence or consensus among participating countries on the standards and criteria against which to evaluate performance, in order to prevent uncertainty and disagreements during the process. The question that will be partly addressed in this paper is how far these preconditions are present in the African context.

The second key principle is that for the process to work properly, the transparency of all its stages, including the publicising of the results, should be guaranteed. Since the role of peer review as a reforming tool will largely depend on the political will of the reviewed government, the publicising of the results will help in exerting a kind of pressure on that government, while the transparency of the process in the investigation and examination stages may exert more pressure.

The third principle is that peer pressure is particularly effective when it is possible to provide both qualitative and quantitative assessments of performance. The quantitative assessment might take the form of a ranking of countries according to their performance, and the drawing up of real scoreboards reflecting such rankings.¹⁹

In the following sections, the paper will explore to what extent the APRM is different from these previous experiences and how it can benefit from some of the lessons provided by these experiences.

¹⁹ Pagani F, *op. cit.*, pp.10–11, 19.

The Conceptual Basis of the APRM: From Good Governance to Democratic Governance

An examination of Nepad/APRM documents shows that they deal with the concept of good governance as if it has a clear-cut definition and happens according to internationally-accepted codes of conduct. This reflects the fact that the authors of Nepad and the APRM seem to assume that there is a universal form of governance against which African governments can be measured. It is little wonder, then, that many African analysts refuse such a theoretical premise for the APRM, which is based on a very narrow definition of the concept of good governance.²⁰

According to such analysts, the concept of good governance, as it was elaborated in the discourse of the international financial institutions (IFIs), refers to a formal set of codes, institutions and doctrines that countries have to abide by, concerned with the management of affairs of state. The problem with the concept of good governance generally and of good political governance in particular is that they emanate from what the IFIs consider to be good political practices, which were narrowly defined in terms of the political ingredients of the structural adjustments programmes (SAPs) imposed on African states by the World Bank and the IMF. As a result, many African analysts see this concept of good governance not as a universal tool that could be adopted in almost any context, but as an imposition connected to the conditionality that characterises the relationship between African countries and the developed world. Other analysts see in this concept an effort to subordinate politics to the dictates of neo-liberal economic policies,

²⁰ The criticism of this narrow definition was pointed out in many interviews, for example: Sanusha Naidu, Research Specialist, Human Sciences Research Council, (Johannesburg, 5 June 2003); Francis Kornegay, Programme Co-ordinator, Centre for Africa's International Relations, (Johannesburg, 6 June 2003); Eddy Maloka, Director, Africa Institute of South Africa, (Pretoria, 9 June 2003); Chris Landsberg, Director, Centre for Policy Studies, (Johannesburg, 2 June 2003); and Stephen Gelb, Director, The Edge Institute, (Johannesburg, 3 June 2003).

while sustainable African development should proceed from a premise that treats politics as an integral part of the development process.²¹

In its central meaning as initially introduced by the World Bank in its 1989 report, the concept of good governance has focused on what makes institutions and rules more effective, including transparency, responsiveness, accountability and the rule of law. Although a number of World Bank studies refer to the concept of popular participation in the selection of governments, which is also not in itself enough to ensure democratic governance, the main definition of governance in World Bank literature remains the same. This refers to the traditions and institutions by which authority in a country is exercised, including the processes by which governments are selected, monitored and replaced; the capacity of governments effectively to formulate and implement sound policies; and the respect of citizens and the state for the institutions that govern economic and social interactions between them.²² In other words, for the World Bank, good governance is often reduced to a technical administrative concept.

This definition is no different from that of the IMF, which refers to aspects of the way a country is governed, including its economic policies and regulatory framework. According to the IMF, these should concentrate on promoting good governance by ensuring the rule of law, improving the efficiency and accountability of the public sector, and tackling corruption as essential elements of a framework within which economies can prosper.²³

²¹ For this view, see Olukoshi A, 'Governing the African political space for sustainable development: A reflection on Nepad', in Anyang' Nyong'o P *et al.* (eds), *Nepad: A New Path?* Nairobi: Heinrich Boll Foundation, 2002, pp.89–90.

²² Kaufmann D, Kray A & P Zoido-Lobaton, *Governance Matters III: Governance Indicators for 1996–2002*. Washington, DC: World Bank, May 2003, p.2, <http://www.worldbank.org/wbi/governance/govdata2002>.

²³ For more information, see IMF, 'The IMF and good governance: A fact sheet', April 2003. <http://www.imf.org/external/np/exr/facts/gov.htm>.

This narrow definition of good governance is similar to the one reflected in Nepad documents. In it, good governance has been transformed from a conception involving the establishment of systems of governance that are legitimate and enjoy the support and loyalty of African peoples, strong enough to defend and advance their sovereign interests, and able to address their fundamental development interests as defined in the first draft of the Millennium Partnership for African Recovery Programme (MAP).²⁴ In place of this, it has become a technical concept of good governance that aims at promoting an accountable and efficient civil service and the effective functioning of parliament, and ensuring the independence of the judicial system.²⁵

However, over and above this narrow meaning and these formal structures, governance should be related to popular participation. What is needed is much more than effective institutions and rules, although these requirements are important for African good governance. Proper governance is also about the fairness of these rules and the participation of the people in the process of deciding how government should operate. It is not only about management of state affairs, but also about state–society relations and popular participation in decision-making. In other words, it is about the convergence of the formal and the substantive within society.

It is this meaning of democratic governance that was emphasised in the *Human Development Report 2002* of the United Nations Development Programme (UNDP) entitled *Deepening Democracy in a Fragmented World*²⁶ (see the following box).

²⁴ See, *Millennium Partnership for African Recovery Programme*, Draft 3a. Pretoria: South African Presidency, March 2001, p.18.

²⁵ See Declaration on Democracy, Political, Economic and Corporate Governance, Nepad, Annex 1, Assembly of the Heads of States and Governments, 38th Ordinary Session of the Organisation of African Unity (OAU), Durban, July 2002, p.5.

²⁶ UNDP, *Human Development Report 2002: Deepening Democracy in a Fragmented World*. New York & Oxford: Oxford University Press, 2002, p.51.

The UNDP's requirements for democratic governance

Good governance is democratic governance. Democratic governance means that:

- people's human rights and fundamental freedoms are respected, allowing them to live with dignity;
- people have a say in decisions that affect their lives;
- people can hold decision-makers accountable;
- inclusive and fair rules, institutions and practices govern social interactions;
- women are equal partners with men, and people are free from discrimination based on race, ethnicity, class, gender or any other attribute;
- the needs of future generations are reflected in current policies;
- economic and social policies are responsive to people's needs and aspirations; and
- economic and social policies aim at eradicating poverty and expanding the choices that all people have in their lives.

Other elements needed in the African context may also be taken into consideration. With Africa's history of ethnic conflict, the issue of inclusivity needs to be incorporated into the UNDP concept of democratic governance. This relates to the issues of social justice and social equity, as well as political equity, which Archie Mafeje incorporated as major ingredients for his proposed alternative concept of 'new democracy'.²⁷ This alternative definition of democratic governance is needed to serve as a theoretical basis for the APRM in order to meet the democratic needs of the African continent. Although many countries on the continent began a wave of democratic transformation beginning in the 1990s within the framework of what was called the third wave of democratisation, these democratic experiences are still fragile and need to be

²⁷ Mafeje A, *op. cit.*

consolidated. Mechanisms are still needed that promote equal opportunities for popular participation in countries that suffered and still suffer from tribalism, ethnic tensions and unequal access to resources.²⁸

As Richard Joseph put it, African leaders have regularly invoked the notion of good governance whenever it rose to the top of the agenda of the IFIs. However, there is little evidence that most African countries are now governed more effectively, that corruption is being controlled or that governments are being held accountable horizontally (by parliaments and judiciary) or vertically (by civil society and periodic elections).²⁹ According to IFI estimates, few African countries that claim to have adopted IFI principles have improved their governance performance.³⁰

To sum up, one can fairly support the argument that the theoretical framework of the APRM lacks a base that would guarantee that democracy and governance proposals will move from the realm of the technocratic to the realm of the political. As Francis Kornegay argued, 'most of the APRM documents are mechanical. One must look at good governance in terms of popular participation and how I [*sic*] interact with power relations within the society.'³¹ Furthermore, these documents raise more questions than they answer and may be designed to pander to donor audiences rather

²⁸ Interview with Sanusha Naidu.

²⁹ Joseph R, 'Beyond crisis and disorder: Accelerating reform and restructuring in Africa.' Presentation for the US Institute of Peace, April 2002. <http://allafrica.com>.

³⁰ For example, according to the World Bank's database of governance (Kaufmann D *et al.*, *op. cit.*), few African countries were able to improve their performance in the six clusters of governance related to voice and accountability (referring to the ability of citizens to participate in the selection of their governments), political stability, government effectiveness, regulatory quality, rule of law and control of corruption. On a scale from -2.5 to 2.5, most African countries with few exceptions got a negative score and few countries achieved significant improvement (for example, Ghana and Senegal in voice and accountability, and Cape Verde in the control of corruption). For more information, see Kaufmann D *et al.*, *op. cit.*

³¹ Interview with Francis Kornegay.

than to respond to the concerns of domestic political forces struggling to engender the non-technical, participatory concept of democratic governance in the African political space.³²

But the question that still remains is how to translate this conceptual basis of democratic governance into tangible indicators against which African governments' performance will be measured in the peer review process. The next section of the paper will try to translate theory into practice by putting forward indicative criteria that can help clarify the meaning of the term democratic governance.

Setting Indicative Criteria for the APRM

The APRM-OSCI document set a number of objectives for democracy and good political governance:³³

- the prevention and reduction of intra- and inter-state conflicts;
- the firm establishment in the constitution of constitutional democracy, the rule of law, a bill of rights and the supremacy of the constitution;
- the promotion and protection of economic, social, cultural, civil and political rights as enshrined in all African and international human rights instruments;
- the upholding of the separation of powers, including the protection of the independence of the judiciary and of an effective parliament;
- the election/appointment of accountable, efficient and effective public office holders and civil servants;
- the rooting out of political corruption;
- the promotion and protection of the rights of women;

³² For more information about this argument, see Olukoshi A, *op. cit.*, pp.90–3.

³³ Nepad Secretariat, *op. cit.*

- the promotion and protection of the rights of children and young persons; and
- the promotion and protection of the rights of vulnerable groups, including displaced people and refugees.

For each of these objectives, various standards have been set. These standards all refer to existing international and African treaties and agreements already ratified by many African countries, including:³⁴

- the Nepad Framework Document (2001);
- the Constitutive Act of the African Union (2000);
- the Cairo Declaration on the Establishment, within the OAU, of the Mechanism for Conflict Prevention, Management and Resolution (1993); (or the Protocol Relating to the Establishment of the Peace and Security Council of the African Union (2002) when operational);
- the Conference on Security, Stability, Development and Co-operation in Africa (CSSDCA) Solemn Declaration (2000);
- the Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government (2000);
- the Charter of the United Nations (1945);
- the African Charter on Human and Peoples' Rights (1990);
- the Grand Bay (Mauritius) Declaration and Plan of Action for the Promotion and Protection of Human Rights (1999);
- the UN Universal Declaration on Human Rights (1948) and all conventions relating to this;
- the UN and African anti-corruption codes (none are mentioned);
- the Convention on the Eradication of Discrimination against Women (CEDAW);
- the Beijing Plan of Action (1995);
- the African Charter on the Rights and Welfare of the Child (1990);

³⁴ *Ibid.*, pp.5–15.

- the UN Convention on the Rights of the Child (1989);
- the OAU Refugee Convention (1969); and
- the UN Convention relating to the status of Refugees (1951).

For measuring a country's commitment and progress towards the objectives listed above according to the established standards, some indicative criteria have been determined for each objective. However, as a result of basing the theoretical framework of the APRM on the concept of good governance, the indicative criteria set out in the OSCI document sometimes seem to concentrate on the institutional and constitutional aspects of good governance. For example, has the country ratified all relevant instruments for preventing, managing and resolving conflicts or protecting and promoting human rights? Are the provisions in the constitution and other laws and regulations effective in ensuring accountability of public office holders? Is there a code of conduct for public office holders? And are there independent and effective institutions, mechanisms and processes for combating corruption? Although these institutional aspects are important, the issue of governance in Africa is not an issue of laws and institutions. For example, many African countries have laws against corruption, yet corruption is one of the strongest impediments to African development.

At other times, references to the issue of political participation were too broad to reflect a country's real political governance performance. For example, what has the country done to ensure peace and security? What has it done to implement the various instruments guaranteeing respect for human rights? What is the state of the country with respect to the separation of powers, the independence of the judiciary and the effectiveness of parliament?

In terms of the broadness of the indicators, David Malcolmson, Manager of International Liaison in the Nepad secretariat, made the following point:³⁵

³⁵ Interview with David Malcolmson, Nepad Secretariat, (Midrand, 12 June 2003).

The political governance indicative criteria are quite specific, taking into consideration that when dealing with political governance, one is dealing with intangibles that cannot be measured by statistics and actual facts and figures. They are at least more detailed than the OAU documents, which speak broadly about commitment to democracy and good political governance. In elaborating these criteria, some experts were asked to review the main codes and documents related to democracy and good governance (the AU Constitutive Act, the African Charter on Human and People's Rights, the Grand Bay Declaration and others) and bring further details to these documents. Thus these criteria could validly and adequately stand as bases for the review and there is no need for any further review before carrying out country reviews.

However, this does not seem to be the only reason. One possible interpretation is that the authors of the OSCI document tried to keep the political governance criteria as broad as possible in order to create a broad consensus among the African countries that joined the mechanism, in the belief that any attempt to be more specific would create a whole series of discontents and disagreements.³⁶ This interpretation may implicitly mean that the criteria are being watered down to keep the least progressive states in the fold, something that may undermine the APRM and call the entire Nepad initiative into question.

Another view is that the OSCI document defined these general criteria only to satisfy donors. As Chris Landsberg has argued,³⁷

part of the problem of the APRM is that it has put great expectations to satisfy donors and external players. It has not gone into specifics because African leaders were in a rush to get something in a limited period of time, something which points to a general fear that APRM could be dished up not so much because it is important for African politics but because donors have to be placated.

This is another problem that may endanger the Nepad process as a whole.

³⁶ Interview with Sanusha Naidu.

³⁷ Interview with Chris Landsberg.

Regardless of these interpretations, it should be pointed out that the formulation of more detailed criteria must be carried out through inter-state dialogue in Africa. The whole APRM process seems to some analysts to be a fairly lengthy and open-ended one of formulating indicators, with the final aim of developing norms and criteria that would achieve consensus.³⁸ As Stephen Gelb has argued, 'the major criteria of good governance, the rule of law or accountability are certainly important, but there must be a wide dialogue to determine how to measure these criteria and how to add them together.'³⁹

This paper seeks to contribute to this discussion, together with other civil society organisations already involved in the process. It cannot be claimed that the criteria set here, which were defined through interviews with various civil society activists, are comprehensive. However, they can serve as a basis for further discussions on operationalising democratic governance, as well as prioritising its different aspects within the African context.

It is also worth mentioning that indicators measuring the various aspects of democratic governance are interrelated and overlap, with some serving more than one objective.⁴⁰

³⁸ Interviews with Chris Landsberg & Stephen Gelb.

³⁹ Interview with Stephen Gelb.

⁴⁰ These criteria were mainly elaborated by extracting criteria from the interviews conducted as well as from supplementary documents, the most important of which are: Al-Sayyid M, 'Governance: The political aspect of sustainable development.' Paper presented at the conference on Good Governance and Development at Cairo University's Centre for the Study of Developing Countries, February 2003; various reports of the SADC Parliamentary Committee; and the deliberations of a discussion group on developing governance criteria. The group included Ross Herbert, Neuma Grobbelaar, Ayesha Kajee, Gina van Schalkwyk and Rawia Tawfic.

The prevention and reduction of intra- and inter-state conflicts

Although this issue is not often considered a part of democratic governance, it must be considered so in the African context. According to the World Bank study, *Can Africa Claim the 21st Century*,⁴¹ about one fifth of the population of Africa lives in countries severely disrupted by conflict. Nearly 20 African countries have experienced at least one period of civil strife since the 1960s. Civil wars lower per capita gross domestic product (GDP) by 2.2% a year and leave a social and political legacy that can affect development for decades.⁴² That is why Yash Tandon has insisted on broadening the concept of good governance to include what he calls 'effective governance.' This type of governance includes maintaining order, an aspect that could, for Tandon, take priority over other aspects of good governance.⁴³

When addressing the objective of preventing and reducing conflict, it is not enough to look at the country's ratification of, or accession to, relevant agreements and instruments or even the existence of early warning systems. Conflict prevention is mainly about fairness in the political process, as well as the fair distribution of the benefits and costs of government socio-economic policies. One needs to look at successful experiences in the continent. For example, at a time when ethnic conflict is tearing many African countries apart, Mauritius has demonstrated that ethnic heterogeneity does not necessarily lead to divisive politics and conflict. It achieves this through procedures such as holding regular multiparty elections in which political competition cuts across the ethnic divide and applying a constitution that ensures balance of ethnic representation in the top levels of government.

⁴¹ World Bank, *Can Africa Claim the 21st Century?* Washington, DC: World Bank, 2000.

⁴² *Ibid.*, pp.57–8.

⁴³ Tandon Y, *op. cit.*

Therefore, when measuring this aspect of government performance, an assessor carrying out the review process would need to ask the following questions:

- Does the political system equitably deliver services and opportunities to all regions and ethnic groups? Are there regions or ethnic groups that constantly receive unreasonably higher shares of government expenditure than others?
- Is the government more responsive to the demands of a particular ethnic group or social class? What is the speed of government response to the general public compared with its response to special interests?
- Do national policymakers in general come predominantly from a particular ethnic group or a specific region?
- How far are the cultural identities of minorities respected (in terms of using their own language, for instance)?
- Do the rules governing the activities of political parties increase or mitigate ethnic differences within the nation?
- Are there key sources of political or ethnic conflict in the country or with neighboring countries and what are the reasons for these conflicts?
- Are there organised efforts to mitigate such conflicts and are these efforts effective?

A significant feature in Africa is military intervention in politics. For measuring this factor, an assessor would need to ask:

- What is the extent and nature of this intervention?
- Do military personnel hold a significant percentage of government positions?
- What is the size of the military budget and its share of the total budget of the country?

The establishment of constitutional democracy with special emphasis on the electoral process

In a constitutional democracy, elections are central to the democratic process. As many of the analysts interviewed pointed out, the problem with African democracy is that elections are nearly always contested with major allegations of vote fraud and unfairness.⁴⁴

Given that this is the case, and given the importance of the electoral process for political participation — particularly its role as a conflict resolution mechanism in itself — this aspect should be emphasised. The indicators already established by election monitoring bodies (the SADC Parliamentary Committee; EU electoral observation missions) can be beneficial in this respect.

In the electoral process, there should be indicators for three phases: the pre-election, election and post-election phases.

In the pre-election phase, indicators are needed to measure the general political environment in the country and the preparations for elections:

- Are political parties free to form and associate?
- Are there independent media responsible for informing the public and providing freedom of expression?
- Is there an electoral system built on consensus among political parties, so that it is perceived to be inclusive and representative?
- Are there education and information programmes aimed at raising levels of voter participation and improving their understanding of the voting procedures? Are these programmes effective? And how long before the elections do they take place?

In the election phase, important questions are:

- Do all parties and voters enjoy freedom of assembly and movement?

⁴⁴ See Jallow BG, 'Life after power', *The Independent* (Gambia), 18 November 2003.

- Do all parties have free and equal access to state media during elections?
- What is the total number of polling stations? Is this number sufficient? Are they distributed countywide? Do voters know their whereabouts?
- Have there been serious complaints about the voter registration process? How accurate are the voters' rolls?
- Is there an electoral commission that is generally perceived to be independent? And does it have adequate resources and staff to monitor all electoral stations?
- Does the police force play a neutral role during elections or is it controlled politically (usually by the party in power)?
- Do opposition parties and NGOs have complete freedom to observe voting at all polling stations?

After the election results have been declared, those assessing the election process should ask:

- How many complaints were registered about the electoral process?
- How are these dealt with? And how speedy is this process?

Besides assessing the electoral process, assessors should look generally at other rules of political competition, the most important of which involves the change of leadership. For some of the analysts interviewed, the central issue that will determine the success of the Nepad peer review mechanism is whether it will address the crisis of leadership in Africa. Will it put in place mechanisms for the periodic and peaceful change of political leadership? Leadership is the main cause of conflict and corruption in Africa. Monopolisation of political power over extended periods of time has helped to institutionalise corruption and has been the main cause of the conflicts and coups that have characterised many African countries since independence, such as the coups against Mobutu in the DRC, Haile Sellassie and Mengistu in Ethiopia, Samuel Doe in Liberia, Siad Barre in Somalia

and many others. Some current potentially explosive situations are those in Togo and Guinea.⁴⁵

Therefore, an assessor would need to ask:

- Are presidential terms of office limited, with a peaceful transfer of power between parties?
- Has the constitution of the country been changed to allow the president to seek re-election for further terms of office over and above those stipulated in the constitution before the change was made?

Other questions about political competition could include:

- How are political parties funded?
- Is there a balanced system of regional representation in parliament? How effective is it?

Rules of the decision-making process

Democratic governance is not an issue of technical procedures: it is related to the processes of decision-making. As Addalla Hamdok has pointed out, this demands that people should participate in decisions that affect them, and should have access to policymakers.⁴⁶ In a survey conducted by Afrobarometer in mid-2001, respondents in Africa's new democracies complained of a wide gap between citizens and their political representatives.⁴⁷

Besides, as Kumle Amuwo has pointed out, African states need processes and rules of decision-making that are more likely to result

⁴⁵ *Ibid.*; interview with Friedman; interview with Korwa Adar, Research Director, Africa Institute of South Africa, (Pretoria, 9 June 2003).

⁴⁶ Hamdok A, 'Governance and policy in Africa: Recent experiences.' World Institute for Development Economics and Research, Discussion Paper No. 126. Tokyo: United Nations University, November 2001.

⁴⁷ The survey included Botswana, Ghana, Lesotho, Malawi, Mali, Namibia, Nigeria, South Africa, Tanzania, Uganda, Zambia and Zimbabwe (see Afrobarometer, *Afrobarometer Briefing Paper*, 1, April 2002).

in actions that are truly in the public interest, instead of favouring the private exploitation of the public interest. The central challenge is to establish proper rules and institutions so that the benefits of growth are more widely beneficial.⁴⁸

In evaluating the decision-making process, an assessor would need to ask:

- Do the decisions correspond to a publicly-felt need?
- Has the process of decision-making been preceded by public debate in the media and other forums?
- Have policymakers examined any studies of the costs and benefits of different alternatives for dealing with the problems that gave rise to the decision?
- Were experts knowledgeable about the object of the decision involved in the decision-making process?
- Were the views of these experts taken into consideration when the decision in question was taken?
- Was the decision adopted the one that maximises benefits and minimises costs?
- Is it possible to modify the decision if new facts appear that affect the rationale for its adoption?
- Who are the parties that were involved in the decision-making process? Did such parties include all those affected by the decision? Were the views of these parties sufficiently communicated to those who made the decision? Is there a valid explanation for any deviation of the decision from the advice given by stakeholders?

Upholding the separation of powers

Emphasising the importance of elections and proper rules of decision-making does not mean ignoring other institutional aspects

⁴⁸ Amuwo K, 'Globalization, Nepad and the governance question in Africa', *African Studies Quarterly*, 6, 3, 2002.

related to the effectiveness of the institutions responsible for making laws. At a conference organised by the UN Department of Economic and Social Affairs dealing with constituting the institutional foundations of governance in Africa, the extent to which checks and balances are respected in the real functioning of African political institutions was debated. It was emphasised that legislatures need to be more answerable to their electorates than to the wishes of the ruling party and that the cult of personality, nepotism, clientelism and personal rule in the executive branch should be controlled.⁴⁹

A review of these aspects would need indicators to measure the independence of the judiciary and the effectiveness of parliament:

- Are parliamentary committees able to effect meaningful changes in the budget or any laws proposed by the ruling party?
- Are there sufficient financial resources and research capacity for committees to carry out their functions properly?
- Of the total numbers of MPs, how many regularly attend parliamentary sessions?
- How frequently are parliamentary oversight instruments employed (investigations, questions, etc.) and how effective are they?
- Do members of parliament reflect the needs of their constituencies?
- How are judges appointed?
- Do they have sufficient technical and financial resources to do their work properly?

⁴⁹ Some of the key recommendations of the conference were consultation of parliaments with their constituents by regular meetings within their communities to listen to people's concerns and policy recommendations; building parliaments and their committees as effective organs of legislative oversight; assuring the independence of the judiciary by its financial autonomy; and creating a three-tier system for appointing judges, in which a judicial service commission recommends names of prospective judges to the executive, which submits them for parliamentary approval before appointment; see UN Department of Economic and Social Affairs, *Governance in Africa: Consolidating the Institutional Foundations*. New York: UN Department of Economic and Social Affairs, 1999.

- To what extent are judicial judgements affected by political pressures?

Ensuring accountability of public office holders and civil servants

As Said Adejumobi has noted, in most African countries, accountable governance is the exception rather than the norm. Although elections are important mechanisms of accountability, this is not enough to ensure accountable governance.⁵⁰ Other crucial aspects are the effectiveness of accountability mechanisms and government policy when dealing with media criticism. Here, the questions to be asked are:

- Are accountability mechanisms built into government? How effective are they?
- Has any senior official of the government been subject to any disciplinary measures while in office as a result of negative reporting by government accountability bodies?
- Does the government respond favourably to fair criticism of its policies in the national media?
- Are local elected bodies authorised to question local officials about their official duties?
- Are they empowered to request disciplinary measures if local officials are found to deviate unreasonably from their prescribed official duties?
- Do national elected bodies possess a similar authority and power (which links back to the issue of the separation of powers)?
- To what degree is the civil service independent of political pressure?

⁵⁰ Adejumobi S, 'Engendering accountable governance in Africa.' Paper presented at the DPMF/IDEA Workshop on Democracy, Poverty and Social Exclusion: Is Democracy the Missing Link? Addis Ababa, Ethiopia, 15–16 May 2000.

Transparency and fighting corruption

In the Afrobarometer survey referred to earlier, about half of survey respondents in 12 African countries thought that corruption among public officials was common.⁵¹ In Transparency International's latest *Corruption Perceptions Index* (CPI) (2003), among African countries, rankings ranged from 30 (Botswana) to 132 (Nigeria). With the exception of Botswana, all African countries included in the index scored less than 5, which means that they range from corrupt to highly corrupt countries.⁵²

Fighting corruption is not simply a question of establishing anti-corruption mechanisms. What is needed is establishing transparent rules, which are an important prerequisite for combating corruption. Therefore, in assessing a country's corruption status, an assessor would need to ask:

- Are the rules of decision-making at all levels of government sufficiently known to the concerned public?
- Is it easy to get access to laws and regulations related to any area of government action?
- Is the language of laws and regulations easily understood by the general public?
- Is it easy to get hold of national statistics? What is the cost in terms of time, money and procedures?
- Are national media subject to any form of censorship? How strict is such censorship?
- Is it common to find reports and articles critical of the government in the national media? Can and do elected bodies criticise the government?
- Do those who criticise the government suffer any kind of retaliation by the government?

⁵¹ Afrobarometer, *op. cit.* Perceived corruption was highest in Ghana, Nigeria, Tanzania and Zimbabwe and lowest in Botswana, Lesotho and Namibia.

⁵² See Transparency International, *Corruption Perceptions Index 2003*. Berlin, Germany: Transparency International, 2003, www.transparency.org.

The rule of law

Although the extent of the rule of law differs among African countries, it was found that generally pervasive corruption, inadequate dispute resolution systems and poor institutional development adversely affect the rule of law and justice sector performance. A study of African trends has also shown that a fundamental misunderstanding of the role of the justice sector and the rule of law in economic development and the prevention of socio-economic crises has led African governments to avoid reform, even when it may be in their own interests.⁵³ Therefore, an assessor would need to ask:

- Are there legislative rules in areas of social activity that are likely to give rise to disputes in the absence of clear rules?
- Are there credible mechanisms for conflict resolution, if such rules are violated or become subject to different interpretations? Is there equality in access to such mechanisms and the institutions that apply them?
- How independent are these mechanisms and institutions?
- How practical is it to resort to such mechanisms and institutions in terms of the lengthy nature of the dispute resolution process and likelihood of its enforcement?

The promotion and protection of political, economic and social rights

This is the final objective, encompassing all the previous indicators that refer to freedom of organisation and expression, equality in access to resources and the protection of minority rights. An examination of the human rights records of African countries indicates that few countries were able to make significant headway

⁵³ United States Agency for International Development (USAID), Democracy and Governance Office, 'Rule of law in Sub-Saharan Africa: Trends analysis and assessment of USAID activities', 1999, www.usaid.gov/democracy/afri/afrol.html.

in promoting the various aspects of human rights. Freedom House estimates that only four countries improved their ranking from 'not free' to 'free'.⁵⁴

Beside those features already discussed, this objective can also include other aspects of civil, political and economic rights:

- Does the attorney-general follow up complaints against the police?
- Is the police force adequately staffed with sufficient equipment and financial resources?
- Does parliament play a role in investigating money laundering?
- Is there any kind of provision for legal aid?
- Are there any programmes for raising public awareness of constitutional rights?
- Is there sufficient emphasis on human rights in the educational curricula? Are there any parts of these curricula that are considered to negate human rights principles?

All the indicators and criteria discussed above are not ends in themselves; rather, they are means of ensuring the popular participation emphasised earlier in this paper. However, it is not only the indicators that will ensure the comprehensiveness and credibility of an assessment process; it is also the organisation and dynamics of the different phases that will determine such credibility. These issues and others will be discussed in the next section.

⁵⁴ See *Freedom in the World 2003*. Washington DC: Freedom House, 2003. The four countries referred to are Benin, Cape Verde, Mali, and São Tomé and Príncipe, according to indicators that measure civil liberties. These include freedom of expression and belief, freedom of association, organisational rights, the rule of law, personal autonomy, and economic and political rights (including free elections, the existence of significant opposition, the right of self-determination and self-rule for minorities).

The Organisation and Structure of the APRM: Towards a Credible and Independent Process

Central to the question of credibility is the structure and organisation of the peer review process. Some analysts insist that the process will not be credible unless all its bases and documents are open to popular discussion before the first review is implemented. With regard to the planning of the APRM process, Antonie van Nieuwkerk believes that 'political elites should have the courage to admit that this was a closed-door process and invite civil society to review the entire organisation and structure of the process. Otherwise it may be difficult for civil society to interact actively with the APRM and its review teams in later stages.'⁵⁵

Ironically, the APRM, which is supposed to promote democratic governance in terms of popular participation, is itself evidence of the lack of such popular participation in the governance of many countries on the continent. As Greg Mills and Jefferey Herbst argue, in most African countries there was little or no discussion of the plan to improve democracy and governance, nor did African leaders of those countries that joined the APRM try to convince their citizenry that accepting the peer review process would be a positive development.⁵⁶ Even in countries where some efforts were made to introduce Nepad and the APRM to local people, for example, in the form of community outreach projects in South Africa, this did not involve asking for people's inputs, but simply informed them what Nepad was about.

However, realistically speaking, one cannot expect African leaders to open up the whole structure and organisation of the APRM to discussion. At the same time, one can fairly argue that there are

⁵⁵ Interview with Anthoni van Nieuwkerk, University of the Witwatersrand Graduate School of Public and Development Management, (Johannesburg, 17 June 2003).

⁵⁶ Mills G & J Herbst, 'New order in sight? The African Union, Nepad and the future of a continent.' Draft Adelphi paper, 2003.

many uncertainties in the process that raise real concerns about and challenges to its operation. This was not only reflected in the controversy about whether political peer review should be included in the process (a discussion that ended with donors saying that it must be included), but it was also reflected in Nepad meetings and documents. As Jakkie Cilliers has noted, these meetings indicated that issues of good governance and human rights have been regarded as more deeply integrated into the AU process than the Nepad/APRM process and that there was a desire from a number of African governments to remove political review from the APRM.⁵⁷

Other factors related to the nature of African politics and the dynamics of African governments' relations with one another contribute to the concern about the position of political review in the APRM. In interviews, many analysts have pointed out the challenge of African solidarity and the notion of sovereignty to the credibility of this process. For Francis Kornegay, for instance, it is difficult to imagine African governments criticising each other effectively, as the continent has a long experience of supporting undemocratic governments in order to maintain African solidarity. As Chris Maroleng pointed out, 'the APRM needs a break with the past, ending this principle of solidarity over all principles and adopting systems ready for criticism.'⁵⁸

This is one of the reasons why many African countries still refuse to join the peer review mechanism. The Namibian minister for information, for instance, has recently pointed out that '[t]he mechanism which involves African leaders monitoring each other's political and economic governance [referring to the APRM] would be impossible in practice. It is very difficult for a country to order another country to change its policies. Who is going to tolerate that?'⁵⁹

⁵⁷ For more details, see Cilliers J, 'Nepad's peer review mechanism.' ISS Paper No. 64. Pretoria: Institute for Security Studies, November 2002, p.1.

⁵⁸ Interview with Francis Kornegay; interview with Chris Maroleng, Researcher, Institute for Security Studies, (Pretoria, 6 June 2003).

⁵⁹ 'Peer Review Mechanism not on', *The Namibian*, 4 December 2003.

As a result of all this, one can reasonably question the existence of the prerequisites for an effective APRM. In particular, one can determine a number of organisational issues that need to be addressed in order to ensure the independence and credibility of the process. The most important of these are discussed below.

Consulting stakeholders and the engagement of civil society: Who are the stakeholders and how should they be consulted?

It is clearly stated in the APRM organisation and processes (OP) document that country review teams are going to consult with a wide range of stakeholders, including parliamentarians, representatives from political parties, the business community, representatives of civil society (including the media, academia, trade unions, NGOs and community-based organisations (CBOs)), and rural communities.⁶⁰ In theory, this seems perfectly consistent with the need for ensuring the credibility of the process by including civil society and CBOs, since these organisations (especially the grassroots ones) understand the conditions on the ground and know the types of issues that relate to good governance and political participation, not in technical terms, but in their interaction with communities. However, the question is how to determine the stakeholders to be consulted.

Given the limited time for review, a representative sample of stakeholders should be selected, which requires gathering a large amount of information about who is doing what, and where. What kind of civil society will reviewers need to talk to, taking into consideration the diversity of civil society in some countries and the dependence of some civil society organisations on the government or on external donors?⁶¹

⁶⁰ For more information, see the APRM Organisation and Processes (OP) document, March 2003, p.13. Available online at www.nepad.org/en.html.

⁶¹ Interview with Sanusha Naidu.

The engagement of civil society is an object of disagreement even among civil society organisations themselves. Although they agree on the need to consult civil society organisations, some of these organisations support being part of the process, while others insist that they must distance themselves from it, fearing that they will be forced to compromise their objectivity.⁶²

Therefore, a methodology for consulting stakeholders should take into consideration the following aspects.

- Consultations must not be confined to organised communities and groups. A parallel approach should be one of speaking to ordinary people and recording notes and observations of what they say or even what they do not say. This would need highly skilled and sensitive review teams.⁶³ Public opinion polls can also be used as a complementary tool and the mechanism can benefit from other approaches already in use by other African organisations, like the Southern African Democracy Barometer.⁶⁴

In this kind of popular consultation, gender balance as well as ethnic and regional representivity must be taken into consideration.

⁶² This disagreement came out in the interview with Chris Landsberg. However, it is worth mentioning that a number of civil society initiatives seeking to have an input in the APRM are under way. One of these is the African Human Security Initiative launched in September 2003 as a network of seven African research NGOs that will monitor and review the compliance of some African countries with a selection of commitments they have entered into as members of the AU (for more information, see <http://www.africareview.org>). The importance of such initiatives is that they represent a compromise in the dilemma created by potential civil society engagement in the APRM by performing a shadow or parallel review, which can provide input into the process without engaging directly in its structures.

⁶³ Interview with Anthoni van Nieuwkerk.

⁶⁴ For more information about this, see UNECA/IDASA, 'Public opinion and the consolidation of democracy in southern Africa: An initial review of key findings', prepared by UN Economic Commission for Africa (UNECA) in collaboration with the Institute for a Democratic Alternative in South Africa (IDASA), 2001.

- Analysts agreed that three or four months of review by country review teams will not be sufficient to reach a comprehensive picture of a country's political governance performance. Therefore, the APRM will need a national, regional and continental network to undertake a continuous process of data collection. This does not necessarily mean establishing new bodies; rather, this task can be assigned to regional organisations (including regional economic communities or regional civil society organisations) and civil society organisations at the national level.⁶⁵

At the national level, Francis Kornegay suggested having a kind of public forum from each country for peer review evaluation, which could provide information for the country review teams. It could also carry out its own review and submit the results to the official reviewers for comparison.⁶⁶

- The process of civil society participation should be a mutually beneficial interactive process. While ensuring this participation, those involved should also add value to the country reviews by sharing their experiences within a particular country. Given the practical challenge the team would face (access to different parties in a conflict situation or overcoming the problem of people being afraid to express their views), this interaction and learning from civil society's experience will be crucial.
- In the process of reviewing the mechanism, which, as the ARPM base document states, will be done every five years, besides a conference of participating countries, there should be some form of parallel conference for civil society, with a final interactive conference between the two parties, to determine the aspects to be revised in an objective and fair manner.⁶⁷

⁶⁵ Interview with Claude Kabemba, Senior Policy Analyst, Electoral Institute of Southern Africa, (Johannesburg, 18 June 2003).

⁶⁶ Interview with Francis Kornegay.

⁶⁷ Interview with Maxi Schoeman, Head, Political Science Department, University of Pretoria, (Pretoria, 5 June 2003).

The distribution of roles in the review process: Can eminent persons really be responsible for the integrity of the process?

Since the eminent persons are responsible for the integrity and credibility of the whole review process, their role is vital to its success. We should therefore assess whether they have sufficient authority to carry out this key role.

The main problem here seems to be that the eminent persons did not participate in the design of the structure and indicators, but were presented with them, and yet are made responsible for implementing the review process properly and ensuring its credibility. It is reasonable to ask whether someone can be responsible for something if he/she has not participated in its design. Some members of the panel may well disagree with the indicators and processes presented to them. For Chris Stals, for instance, 'many shortcomings are found in the APRM/OSCI document and I will ask at our first meeting in July if I can suggest other indicators.'⁶⁸ But according to the APRM base document, only the heads of states have the right to review the whole process every five years, which means that the eminent persons are excluded from this process.⁶⁹

It is also worth mentioning here that a change occurred in the authority vested in the eminent persons between the draft and the final version of the APRM memorandum of understanding. This change removed the eminent persons as final arbiters in any dispute relating to the interpretation of the APRM documents.⁷⁰

Many concerns have been raised about the precise meaning of parts of these documents. Removing the authority to interpret the documents from the hands of those who are responsible for the credibility of the process poses an immediate and obvious threat to that credibility.

⁶⁸ Interview with Chris Stals, member of the APRM panel of eminent persons and former governor of the South African Reserve Bank, (Pretoria, 24 June 2003).

⁶⁹ See the APRM OP document (HSGIC-3-2003), Annex 2, p.6

⁷⁰ See Cilliers J, 'Peace and security through good governance', *op. cit.*, p.4.

In essence, the heads of state seem to play the main role in the process. They are simultaneously both the key players and referees, as they have the ultimate responsibility for oversight of the APRM organisation and processes. Under the pretext that it is a 'peer' review process, they have the authority to consider the final country reports, and it is not clear what the limits of their authority will be to change the contents of these reports by omission or any other kind of intervention. It is also unclear what actions will be taken in cases of non-compliance by the countries under review with the recommendations of reviews.⁷¹

Therefore, in order to achieve a balance between authorities and responsibilities and to harmonise the flow of the review process, the following points can reasonably be made.

- The members of the panel of eminent persons should be able to examine the indicators and processes of the APRM and suggest changes in order to ensure the credibility and independence of the process.
- The members of the panel should also have the right of arbitration of any disputes that may emerge around the interpretation of APRM documents, given that they will be given the right to suggest any amendments to or further clarify these documents.
- With regard to appointing the panel, although it currently reflects both a gender and regional balance (taking into consideration that a North African member will join the panel), it does not reflect a balance between experts in economic governance and political governance. Most of the members have economic rather than political backgrounds,⁷² a fact that once again raises questions as to

⁷¹ For more information about the mandate of the APRM Forum, see the APRM OP document (HSGIC-3-2003), *op. cit.*, pp.2-3.

⁷² At the seventh meeting of the Nepad Heads of States Implementation Committee in Abuja in May 2003, six eminent persons were named: Adebayo Adedeji (the former UN under secretary-general and executive secretary of UNECA); Marie-Angelique Savane (the former director of the UN Population Fund) from West Africa; Bethal Abdu Kiplagat (chairman of the Nairobi Stock Exchange) from East Africa; Dorothy Njeuma (vice-president of the Executive Board of the Association

the significance of the political aspect of the review process. There is also the need to clearly state how panel members were appointed and to publicise more information about their backgrounds, so that people in all the regions of the continent may access this information.

- Finally, and most importantly, it should be clearly understood that a 'peer' review does not mean concentrating central authority in the hands of the heads of states. It can be accepted that, consistent with the aim of the peer review process, it will be the responsibility of the peers to exercise oversight of the APRM organisation and processes and carry out peer dialogue and persuasion. However, this should be based on reports prepared by a completely independent process, taking into consideration recommendations made by a totally independent panel.

Harmonising the APRM and other AU institutions

It is clear that with the initiation of the APRM under Nepad, a proliferation of democracy and human rights structures has occurred, which may lead to duplication. The gradual integration of Nepad mechanisms into the AU secretariat in Addis Ababa, which will happen over the next three years, is expected to eliminate this duplication. However, some duplications will be difficult to be dealt with. The most apparent is the one between the APRM and the CSSDCA. A review of the CSSDCA document shows that there are apparent areas of overlap between the two mechanisms. In the last CSSDCA Memorandum of Understanding issued by the Heads of

of African Universities) from Central Africa; Graça Machel (wife of the former South African president Nelson Mandela and an activist in charities and UN activities); and Chris Stals (a monetary policy expert and former governor of the South African Reserve Bank) from Southern Africa. A North African diplomat (Maroun Meldeci) was named later. For more information, see 'The peer review team', *eAfrica*, June 2003, p.9 (available online at www.wits.ac.za/saita/online.htm); 'High-level meeting discusses the African peer review mechanism', *Nepad Dialogue*, 10, 29 July 2003.

States and Government First Standing Conference in July 2002, a framework for implementing some specific key performance indicators for security, stability, co-operation and development was adopted. According to this framework, each country should establish a national mechanism for monitoring the core values of the CSSDCA, with all stakeholders providing their inputs to the review process within the framework of CSSDCA criteria. The process will also be supported by visitation panels composed of eminent, reputable Africans to carry out professional, independent and objective assessments in two-year cycles as part of the preparations for the bi-annual CSSDCA standing conferences.

This process will end in the production of country reports that depend on the inputs of different stakeholders. As the document declares, the aim of this 'peer' scrutiny process is to facilitate the development of best practices and suggest ways in which they can be easily transferred to countries where they are not in operation. This clearly duplicates the Nepad peer review mechanism.⁷³

A compromise was put forward at the fifth Nepad Heads of States Implementation Committee meeting in Abuja in November 2002, when South African Deputy Foreign Minister Aziz Pahad declared that the Nepad peer review mechanism would be limited to economic and corporate governance issues only.⁷⁴ This was totally rejected by the Western partners, resulting in political governance issues being included in the APRM once again.

One can argue that the process of integrating Nepad with the AU should try to achieve the following essential aims.

- The relationship between the Nepad peer review mechanism and the CSSDCA peer review should be clarified, to avoid redundancy. At present, the difference between the two mechanisms is that the CSSDCA process will include all AU members while the

⁷³ For more information, see the Memorandum of Understanding of the CSSDCA First Standing Conference on Security, Stability, Development and Co-operation in Africa, Durban, South Africa, 8–9 July 2002.

⁷⁴ See Cilliers J, 'Peace and security through good governance', *op. cit.*, p.6.

Nepad/APRM process is voluntary. It is also clear that the CSSDCA process contains time-bound objectives, which is not clear in the Nepad process. However, there are many areas of overlap in the aim of both processes, as well as in structure and benchmarks, which suggests that it would be better if the two processes were integrated as one mechanism.

- Given that the first objective of Nepad/APRM is to prevent and reduce inter- and intra-country conflict, the relationship between this mechanism and the African Peace and Security Council (PSC) should also be determined. As Hussein Solomon put it, 'no one knows what the relationship is between the APRM and the PSC or between the APRM and the CSSDCA. It is one big black box.'⁷⁵ Although the APRM is listed as a partner institution, the terms of the relationship between the APRM and its partner institutions should be separately detailed. The APRM can also benefit from these partner institutions as sources of data. One suggestion is to facilitate the relation between the APRM and the African Commission on Human and Peoples' Rights, for instance, by having the president or a member of the commission, serve as an *ex-officio* member of the APRM panel of eminent persons.⁷⁶

Other relevant institutions can be added to the list. One of these is the Economic, Social and Cultural Council (ECOSOC), whose major aim is to include African people in the activities of the AU by building partnerships between governments and civil society.⁷⁷

- At the same time, with the proliferation of institutions that are supposed to be APRM partner institutions, one should ask if these institutions have the capacity to provide technical assistance to the APRM. Some of these organs (the Pan-African Parliament and the African Peace and Security Council) have not yet been established, and some still need sufficient countries to ratify their formal

⁷⁵ Interview with Hussein Solomon, Professor of Political Science, University of Pretoria, (Pretoria, 6 June 2003).

⁷⁶ Interview with Evarist Baimu, Researcher, Centre for Human Rights, University of Pretoria, (Pretoria, 3 June 2003).

⁷⁷ See the function of ECOSOC in the AU Constitutive Act, Lomé, July 2000.

establishment, a task that may take months or even years to be completed. Besides, there are many doubts about the effectiveness of existing partner institutions. It may be a good opportunity to build up the capacity of these institutions in order to support the peer review process, but much time and technical expertise will be needed to achieve this.

To sum up, the current process of integrating Nepad into the AU should simplify this 'huge black box' of overlapping institutions and mechanisms. Clear rules and procedures must be set down and different roles must be clearly demarcated as soon as possible, to avoid the process becoming one of trial and error.

After the Review: Results and Repercussions

Two aspects of the review process need to be mentioned here. The first concerns the form the results of the review process will take, which is not clearly identified in the APRM documents. The second can be posed as an obvious question: What will happen if the reviewed country refuses to implement the recommendations of the process?

As regards the form of the results, although this is not clear in the documents, it is understood that the report will be a qualitative assessment. On the other hand, as was discussed in the first part of this paper, examples of other experiences show that the review process should provide some sort of quantitative result to practically assist the peer pressure process. Many analysts refuse to consider these types of results for various reasons, including the fact that such results are always controversial and contested, especially with respect to political governance. Also, there is the fear of creating a bad image in the eyes of donors and investors for a country that may lack resources and require financial support to improve its governance performance. Further, given its sensitive nature, it will

be difficult for African countries to accept this ranking and rating system.⁷⁸

However, since its main aim is to assist countries in overcoming their shortcomings, it will be easier if people have a numerical index for every aspect of political governance to clearly assess progress in this regard. Also, independent observers may view with cynicism, reports that are vague and indecisive, and make statements such as, 'the country has made progress in fighting corruption but' According to Daniel Kaufmann, 'in the eye of the outside world, it would be a missed opportunity if there is no rating. The mechanism will lose its credibility.'⁷⁹ Some analysts even support having an aggregated index to reflect the country's performance in all areas of political governance.⁸⁰

A reasonable compromise is to combine both qualitative and quantitative results. It will not be enough to use a numerical index to reflect a country's performance without explaining why the country was given a particular rating. At the same time, one should bear in mind that the aim of this quantitative assessment is not to compare countries that are at different levels of political development, but to make it easier for the ordinary citizen to identify progress in the areas under review.

The question of what action will be taken against countries that do not abide by APRM principles is another controversial aspect and one of the uncertainties of the peer review process, as the APRM base document states that 'appropriate measures' will be taken if a state does not implement the recommendations of the review report, without indicating the nature of these measures. It is also worth mentioning that this rule was completely absent from the APRM/OP

⁷⁸ Analysts opposing quantitative reports or giving only tentative support in interviews were Anthoni van Nieuwkerk, Maxi Schoeman and Claude Kabemba.

⁷⁹ Interview with Daniel Kaufmann, Director, Global Governance Programme, World Bank, (Pretoria, 13 June 2003).

⁸⁰ This was mainly supported by Stephen Gelb.

document, which purported to give all the details of the review processes.⁸¹

Other experiences of peer review do not suggest any punitive action, which is consistent with the nature of the review process as a learning process aimed at sharing best practice through peer dialogue. However, some analysts consider that Africa needs more than a learning process that simply shares best practice and that the mechanism will not make a difference unless its 'teeth are sharper.'⁸² Being a voluntary process does not mean making it open-ended, and since the country has voluntarily chosen to join, it should be encouraged, or even coerced, to live up to its commitments. For Stephen Gelb, for instance, 'the APRM is a club. There should be a prize for joining the club and there have to be penalties if you break the rules.'⁸³

On the other hand, others are aware that if the mechanism were made punitive, this will be used as an excuse by those who do not want to join the mechanism. Realistically, some African governments will not submit to being punished by their peers. Besides, it is not the job of the peer review mechanism to impose sanctions.⁸⁴ As Chris Landsberg has pointed out, 'Africa is certainly in need of punitive actions to promote democracy, but this is not the aim of the APRM.'⁸⁵

In suggesting a practical solution to this dilemma, one must differentiate first between two cases: lack of willingness to comply and lack of capacity. A country cannot be punished because of its inability to establish mechanisms and institutions that help to improve its political governance. This points to the importance of the review process as a capacity-building tool that contributes to

⁸¹ See APRM base document and OP document, *op. cit.* Note that the Guidelines document issued in December 2003 has also not clarified these measures. See 'Guidelines for countries to prepare for and to participate in the APRM', December 2003, p.9. Available at www.nepad.org/en.htm

⁸² Interview with Stephen Gelb. See also Kagora *op. cit.*

⁸³ Interview with Stephen Gelb.

⁸⁴ Interviews with Chris Landsberg and Evarist Baimu.

⁸⁵ Interview with Chris Landsberg.

exposing a country's shortcomings and supporting its efforts to resolve them.

As for the case of lack of willingness, it was pointed out that in the experience of international organisations, attempts at forcing countries into actions have generally not been successful. This does not mean avoiding taking any kind of action against the countries involved. Since the review process can be used as a legitimising tool, there should be strict procedures for taking action against a country. This could happen at two levels.

- At the level of the peer review process itself, a country that is unwilling to co-operate adequately in the different phases of the process (whether by not offering the necessary information, not facilitating the work of the country review teams or not implementing the recommendation of the country report) could be excluded from the review after an initial warning and pressure by its peers. This should be a gradual process with the decision to exclude as a last resort.
- Since the APRM Heads of States Forum will be responsible for tabling country reports formally at the AU, they could also recommend taking action according to an AU mandate.⁸⁶ However, this could only be done in the long term after the AU structures have been established.

Alternatively, an effective indirect way of applying pressure would be to have the reports publicised as soon as they have been considered by the APRM Forum. As stated in the first part of this paper, other experiences show that publicising results will exert a silent pressure on the reviewed government, while the transparency of the process in the investigation and examination stages may also exert more pressure. This aspect is again one of the uncertainties of the APRM process. While the APRM/OP document does not clearly define when the reports will be made public, the APRM base document indicates that the report will be made public six months

⁸⁶ See article 23 of the AU Constitutive Act.

after the APRM Forum has concluded its assessment of it. The question then arises as to why there is such a lengthy time gap.⁸⁷

Conclusion: Between Achievability and Perfection

There is no doubt that the Nepad peer review mechanism is a valuable opportunity for holding African governments accountable and providing a channel for civil society engagement. As Eddy Maloka points out, 'the APRM is an opportunity for civil society to hold their governments accountable, as countries are committed to promote popular participation in the APRM.'⁸⁸ Besides the various questions raised in this paper, many others still need to be answered: How can the process include African countries with different levels of development, yet assess them with the same basic criteria? How will the mechanism secure sufficient financial and technical resources for its work?

Although many challenges and uncertainties have been raised around the APRM, it must be seen as a progressive process. It is about building mutual confidence and trust and bringing gradual change to African countries' governance performance. Although quantitative indexes are required, one cannot compare two countries with different democratic histories and different levels of democratic development with each other. Public opinion surveys about people's perception of democracy (those of the Southern African Democracy Barometer, for instance) show that their assessment and evaluation of the political governance of their present regimes is affected by the nature of previous regimes.⁸⁹ The comparison should therefore not be between a country and its peers, but between a country in a first review and the same country in a second review, with the objective of achieving progressive development.

⁸⁷ See APRM base document and OP document, *op. cit.*

⁸⁸ Interview with Eddy Maloka.

⁸⁹ For more information, see UNECA/IDASA, *op. cit.*

The problem of the technical and financial resources of the review process is also a crucial one that will determine if the review processes will be done in parallel by more than one country review team (a process that will inevitably need more clarification of the rules of the process to avoid subjectivity) or one after another by the same team. It will also determine the efficiency of the process, since evaluating all the indicators needs enough technical assistants with sufficient resources to get suitable results in the review visit, which will not exceed six months in length. However, one can imagine that if this mechanism gains credibility over time, Western donors may be attracted to provide technical or financial assistance for the review processes. This does not necessarily mean that the process will have to be sold to Western donors once again, but that gaining credibility may achieve a dual benefit.

As was mentioned earlier, beside its main aim of peer learning, peer dialogue and bringing about gradual progress, the review process can serve as a capacity-building process for both African countries and civil society organisations. It can also serve as an early warning system, as it will not only assess and encourage trends towards compliance among poorly-performing countries, but also attract attention to negative trends in countries that may at the time have good performance records.⁹⁰

On the other hand, ensuring the credibility of the process is not the sole responsibility of African countries, but also of the Western partners, who are supposed to play their part by shifting their support and resources away from governments that show unwillingness to perform in the context of the peer review.⁹¹ They also need to reduce their scepticism about the continent in general and the APRM in particular, a scepticism that was clearly pointed to by Thabo Mbeki in his speech at the World Economic Forum/Africa Summit 2003, when he said: 'A lot of the world is sceptical about us,

⁹⁰ Interview with Chris Maroleng; interview with Kathryn Sturman, Senior Researcher, Institute for Security Studies, (Pretoria, 30 May 2003).

⁹¹ See Gelb S, *South Africa, Africa and the New Partnership for Africa's Development*. Braamfontein: The Edge Institute, September 2002, p.35.

believing that we Africans are not serious about ourselves. We have to prove that the will to implement Nepad is there.⁹²

To ensure the credibility of the process and deepen the sense of ownership, the APRM in particular and Nepad in general need a comprehensive communication strategy to inform people about the nature, aims and dynamics of the APRM process, as well as clarifying the people's role in it. As Baroness Lynda Chalker has pointed out, 'there is a need for much better communication about what is the core of APRM. People all over Africa are asking how it will work and how to get involved. It seems that everybody needs a 'wise man' to 'explain the process'.⁹³

⁹² Mbeki T, 'African political challenges: The road ahead.' Speech at the plenary session of the WEF Africa Economic Summit, Durban, South Africa, 12 June 2003.

⁹³ Chalker L, in her report on the session 'Civil society: Playing its part in the Nepad' to the plenary session of the Africa Economic Summit, Durban, South Africa, 12 June 2003.



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